(5)

Supreme Court U.S.
FILED
DEC 26 2002
OFFICE OF THE CLERK

No. 01-1806

IN THE
SUPREME COURT OF THE UNITED STATES

THE PEOPLE OF THE STATE OF ILLINOIS
ex rel. JAMES E. RYAN, ATTORNEY GENERAL
OF THE STATE OF ILLINOIS,

Petitioner,

v.

TELEMARKETING ASSOCIATES, INC.,
RICHARD TROIA AND ARMET, INC.,

Respondents.

**On Writ of Certiorari To The
Supreme Court of Illinois**

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF PETITIONER

DEBORAH M. ZUCKERMAN
COUNSEL OF RECORD
STACY J. CANAN
AARP FOUNDATION

MICHAEL R. SCHUSTER
AARP

601 E Street, N.W.
Washington, DC 20049
(202) 434-2060

Counsel for *Amicus Curiae*

20 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. TELEMARKETING FRAUD IS RAMPANT AND COSTLY 5

II AARP RESEARCH DEMONSTRATES VULNERABILITY TO TELEMARKETING FRAUD. 7

CONCLUSION 15

TABLE OF AUTHORITIES

CASES

Riley v. Nat'l Fed'n of the Blind, 487 U.S. 781 (1988) 4, 15

Village of Schaumberg v. Citizens for a Better Env't, 444 U.S. 620 (1980) 4, 15

STATUTES & REGULATIONS

Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 (2002) 2, 5

Telemarketing Sales Rule, 16 C.F.R. § 310 (2002) 2

LEGISLATIVE MATERIALS

Comm. on Gov't Operations, *The Scourge of Telemarketing Fraud: What Can Be Done Against It?*, H.R. Rep. No. 102-421 (1991) 6

Hearing on Federal Trade Commission Reauthorization before the Consumer Affairs, Foreign Commerce and Tourism Subcomm. of the Senate Commerce, Science and Transp. Comm. (July 17, 2002), *at* http://www.aarp.org/press/testimony/2002/071702.html. 3

Telescams Exposed: How Telemarketers Target The Elderly: Hearing Before the Senate Special Comm. on Aging, 104th Cong. (1996) 7

The Nature and Extent of Telemarketing Fraud and Federal And State Law Enforcement Efforts to Combat It: Hearings Before the Commerce, Consumer, and Monetary Affairs Subcomm. of the House Comm. on Gov't Operations, 101st Cong. (1990) 5, 6

MISCELLANEOUS

AARP, *Are Your Donations Hitting Their Target?: Charity Scams and Deceptive Fundraising Tactics*, Senior Consumer Alert, Fall 1997 3

AARP, *Congratulations!! You May Have Just Saved Money & Lots of Grief*, Senior Consumer Alert, Fall 1994 3

AARP, *Consumer Fraud: Telemarketing*, Consumer Affairs Fact Sheet, June 1996 3

AARP, *Contests & Sweepstakes -- Don't Be A Loser*, Consumer Affairs Fact Sheet, Sept. 1994 3

AARP, *Fundraising Solicitations*, Consumer Affairs Fact Sheet, June 1995 3

AARP, Press Release, Charity Scams Likely to Target Older Americans, AARP Warns (Sept. 19, 2001), *at* http://www.aarp.org/press/2001/nr091901.html 3

AARP, *Telemarketing Fraud and Older Americans: An AARP Survey* (1996) ..... *passim*

Patricia Barry, *Charities: Give well but wisely*, AARP Bulletin (AARP, Wash., D.C.), Dec. 1999 3

Carole Fleck, *Beware, Be Wise About Donations*, AARP Bulletin (AARP, Wash., D.C.), Dec. 2002 3

United States-Canada Working Group, *United States-Canada Cooperation Against Cross-Border Telemarketing Fraud*, Report to President Bill Clinton and Prime Minister Jean Chrétien (Nov. 1997) 5

No. 01-1806

IN THE

SUPREME COURT OF THE UNITED STATES

THE PEOPLE OF THE STATE OF ILLINOIS
ex rel. JAMES E. RYAN, ATTORNEY GENERAL
OF THE STATE OF ILLINOIS,

Petitioner,

v.

TELEMARKETING ASSOCIATES, INC.,
RICHARD TROIA AND ARMET, INC.,

Respondents.

On Writ of Certiorari To The Supreme Court of Illinois

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*[1/]

AARP is a non-profit, non-partisan organization with more than 35 million members aged 50 and older. As the largest membership organization representing the interests of older Americans, AARP is greatly concerned about the rampant telemarketing fraud perpetrated against older people, including deceptive and misleading charitable solicitations. Because many people do not realize that they are victims, and many others are

---

[1/] Letters indicating the parties' consent to the filing of this brief have been filed with the Clerk of the Court. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae*, its counsel, or its members made a monetary contribution to the preparation or submission of this brief.

unwilling to report these frauds to law enforcement agencies, there is no way to quantify with any certainty either the number of victims or the dollars lost to these scams. Congress has estimated, however, that $40 billion is lost to fraudulent telemarketers annually. *See* Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101(3) (2002).

Many victims are older people, specifically targeted by these scam artists. Consequently, AARP supports federal and state laws, regulations, and public policies designed to outlaw fraudulent and deceptive telemarketing practices and to provide adequate remedies for victims. Several years ago, in recognition of the fact that older people are favorite targets of fraudulent telemarketers, AARP made federal and state legislative and regulatory initiatives and public education on this issue a priority. For example, AARP participated in the Federal Trade Commission's (FTC) promulgation of the Telemarketing Sales Rule, 16 C.F.R. § 310 (2002), by submitting extensive written comments in response to two notices of proposed rulemaking and appearing at a three-day public hearing convened by the Commission. AARP supports continued FTC monitoring of the telemarketing Rule to determine where improvements are necessary, and is involved in the agency's current rulemaking to revise the Rule, submitting written comments and participating in a workshop this past summer.

AARP also actively supports state legislative efforts to enact laws aimed at curbing telemarketing fraud and enhancing consumer protections. In addition to supporting the enactment of "do not call" laws on the state level, AARP submitted comments in response to the FTC's recent announcement of its intent to create a national "Do Not Call" registry. In July 2002, AARP submitted testimony to Congress in connection with reauthorization of the FTC, focusing on the Telemarketing Sales Rule and creation of the Do Not Call registry. AARP's testimony noted that the Rule provides states with a floor of consumer protection, and that nearly thirty states have enacted laws and regulations that expand upon the Rule's protections and prohibitions to better protect consumers. As with its earlier comments and testimony with respect to the FTC's promulgation of the original Rule, AARP's congressional testimony noted the importance of making sure that the FTC's national Do Not Call registry not preempt state efforts to establish

stronger consumer protections. *See Hearing on Federal Trade Commission Reauthorization before the Consumer Affairs, Foreign Commerce and Tourism Subcomm. of the Senate Commerce, Science and Transp. Comm.* (July 17, 2002) (testimony of AARP Board Member Charles Mendoza), *at* http://www.aarp.org/press/testimony/2002/071702.html.

In addition, AARP has been an active partner with state and federal law enforcement and consumer protection agencies, supporting the investigation and prosecution of fraudulent telemarketers. For example, in 1995, AARP members became undercover witnesses for the FBI and attorneys general, tape recording conversations with suspected fraudulent telemarketers. The recordings became the foundation for "Operation Senior Sentinel" prosecutions, as they revealed the actual misrepresentations and deceptive pitches made to convince consumers to make purchases or otherwise send money.

AARP also has focused on educating consumers about how to identify and avoid fraudulent pitches and steps they should take to enforce their rights when they have been defrauded. AARP has released several publications and public service announcements and published articles to advance this goal. *See, e.g.*, Carole Fleck, *Beware, Be Wise About Donations*, AARP Bulletin (AARP, Wash., D.C.), Dec. 2002, at 18; Patricia Barry, *Charities: Give well but wisely*, AARP Bulletin (AARP, Wash., D.C.), Dec. 1999, at 3; AARP, Press Release, Charity Scams Likely to Target Older Americans, AARP Warns (Sept. 19, 2001), *at* http://www.aarp.org/press/2001/nr091901.html; AARP, *Are Your Donations Hitting Their Target?: Charity Scams and Deceptive Fundraising Tactics*, Senior Consumer Alert, Fall 1997; AARP, *Consumer Fraud: Telemarketing*, Consumer Affairs Fact Sheet, June 1996; AARP, *Fundraising Solicitations*, Consumer Affairs Fact Sheet, June 1995; AARP, *Congratulations!! You May Have Just Saved Money & Lots of Grief*, Senior Consumer Alert, Fall 1994; AARP, *Contests & Sweepstakes -- Don't Be A Loser*, Consumer Affairs Fact Sheet, Sept. 1994. AARP worked with state and federal law enforcement and regulatory agencies, as well as consumer and industry groups, to develop consumer education messages and to support investigation and prosecution of fraudulent telemarketers.

At the same time, AARP recognizes the dynamics involved in charitable fundraising. In the next year, the AARP Foundation, AARP's affiliated charitable organization, will begin a direct mail campaign to raise money to support its charitable programs. The Foundation has not hired professional fundraisers nor does it engage in telemarketing in its charitable solicitations.

Because of AARP's concerns about fraudulent telemarketing pitches, and the particular targeting of older people, AARP submits this brief as *amicus curiae* in support of Petitioner's position that the First Amendment does not bar states from seeking to prove a fraud charge against a professional fundraiser that misrepresents that monies raised will be used for charitable purposes.

SUMMARY OF ARGUMENT

Telemarketing fraud robs Americans of billions of dollars every year. Many victims are older people, specifically targeted by fraudulent telemarketers. AARP's research has shown that older people are inundated by telemarketers and seem particularly vulnerable to fraudulent telemarketing pitches; they seem unable to spot fraud when it is occurring, have difficulty terminating sales calls, and repeatedly take the bait set by fraudulent telemarketers. While the research provides no easy answer as to why people fall for fraudulent telemarketing schemes, it does show that people have a great deal of difficulty differentiating between fraudulent and legitimate calls.

The scope of telemarketing fraud underscores the importance of federal and state authorities having a full arsenal of weapons to investigate and prosecute fraudulent telemarketers and to seek redress for victims. Fraud prosecutions are a critical component in the fight against these telemarketers. Yet, the Illinois courts have closed off this important avenue of redress. This is despite the Court's recognition that states have a substantial interest in protecting the public and charities from fraud and that "[f]raudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." *Village of Schaumberg v. Citizens for a Better Env't*, 444 U.S. 620, 637 (1980); *see also Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 792 (1988). When indicia of fraud are present, prosecutors should be afforded a

chance to prove their case. While Petitioner ultimately may not be able to establish that Respondents committed fraud, neither the First Amendment nor the Court's decisions applying the Amendment to charitable solicitations warrants closing the courthouse door and depriving Petitioner of the opportunity to present its case. Unless the Court reverses the Illinois Supreme Court, the American public will have lost an important consumer protection tool and professional fundraisers will be given license to take advantage of Americans' generosity.

ARGUMENT

I. TELEMARKETING FRAUD IS RAMPANT AND COSTLY.

Telemarketing fraud is "one of the most pervasive forms of white-collar crime" in the United States. United States-Canada Working Group, *United States-Canada Cooperation Against Cross-Border Telemarketing Fraud*, Report to President Bill Clinton and Prime Minister Jean Chrétien (Nov. 1997). Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 (2002), after finding that victims lose an estimated $40 billion a year, and that the Federal Trade Commission's resources were insufficient to protect consumers. *Id.* at §§ 6101(2), 6101(3).

Various congressional committees and subcommittees have held hearings on this issue. Describing his reaction to the briefing materials for one hearing, a Congressman stated: "I was stunned to learn how seemingly impervious many of these telemarketing and boiler room practices are to effective criminal prosecution. These guys are like termites. Once they are in business, you can't seem to get rid of them." *The Nature and Extent of Telemarketing Fraud and Federal And State Law Enforcement Efforts to Combat It: Hearings Before the Commerce, Consumer, and Monetary Affairs Subcomm. of the House Comm. on Gov't*

Operations, 101st Cong. 3 (1990)[2] (opening statement of Rep. J. Dennis Hastert). He noted that older people often lose their life savings, and that "[v]ery rarely are these funds ever recovered, even when there is prosecution." *Id.* Another subcommittee member characterized telemarketing fraud as a "devastating crime, robbing unsuspecting victims, not only of their money but of their self-esteem and their financial independence." *Id.* at 4 (opening statement of Rep. Frank Horton).

The testimony is replete with examples of people who lost significant sums of money to fraudulent telemarketers. An 84-year-old Georgia widow poignantly described how she lost $20,000, the entire legacy left to her by her husband and their entire life savings, in an investment scam. *Id.* at 11 (testimony of Grace L. Singletary). She stated that she had spent many years as a schoolteacher and thought of herself as an intelligent person, but that the caller sounded like someone she could trust and his persuasive manner convinced her. She described her constant worry about "a future without any savings," and asked the subcommittee "to stop this kind of sophisticated thievery." *Id.* at 14, 15.

Similar sentiment and examples surfaced at a more recent Senate hearing. Former Senator and Committee Chairman William Cohen stated:

> Everyday, senior citizens across the Nation are besieged by telemarketers who invade the privacy of their homes seeking donations to charities or making promises that are too good to be true. Telemarketing scams . . . run the gamut from small fly-by-night operators to sophisticated organized crime rings that establish boiler rooms in several cities. Whatever their size, these telephone thugs share the common motto of "reach out and scam someone," using high pressure

---

[2] Congressional findings and recommendations based on this two-day hearing are found in Comm. on Gov't Operations, *The Scourge of Telemarketing Fraud: What Can Be Done Against It?*, H.R. Rep. No. 102-421 (1991).

> sales tactics and slick talk to lure their victims into sending them hundreds -- indeed, even thousands -- of dollars.

Telescams Exposed: How Telemarketers Target The Elderly: Hearing Before the Senate Special Comm. on Aging, 104th Cong. 1 (1996) (opening statement of Sen. William Cohen). He noted that tape recordings and transcripts of calls obtained during "Senior Sentinel" revealed "how unscrupulous callers engage in what amounts to 'teleterrorism' by verbally abusing, insulting and berating the senior citizens they call." *Id.* at 2. The Senator cited the example of a retired food worker in her 80's who lost more than $240,000 to fifty telemarketing businesses.

> She was told she was giving her money to an organization that helped children avoid drugs and she sent the money saying that perhaps, "If I could save the life of just one child, it would be worth it." The woman told committee investigators that she lost her life savings to these scams . . . . Needless to say, none of her donations actually went to a legitimate charity.

Id.

II. AARP RESEARCH DEMONSTRATES VULNERABILITY TO TELEMARKETING FRAUD.

In order to better understand the motivations of telemarketing fraud victims and, thereby, design an effective campaign to help them avoid being victimized, AARP sponsored the first large-scale survey ever to investigate telemarketing fraud among older people. AARP respectfully suggests that a discussion of this research will assist the Court in understanding the dynamics at play in telemarketing fraud. The Court thus will have a clearer picture of why it is important for states to retain the authority to investigate and prosecute when telemarketers misrepresent to potential donors the uses to which their contributions will be put.

The AARP Survey, conducted by Princeton Survey Research Associates, paints a surprising portrait of victims and debunks some of the theories previously advanced to explain why older people seem particularly vulnerable to telemarketing fraud. AARP, *Telemarketing Fraud and Older Americans: An AARP Survey* (1996) (copies lodged with the Clerk). Although the focus of the Survey was on sweepstakes and prize promotions, fraudulent telemarketers used similar tactics whether they were promoting a contest or soliciting a charitable contribution. As described more fully below, the victims are relatively affluent, well educated, and informed; they are active in their communities; and they express many of the same attitudes about telemarketers that are widely held by people who do not fall prey to fraudulent schemes. This description stands in marked contrast to the prevailing view of older victims, based on anecdotal evidence, as socially isolated, ill-informed, confused, and committed to old-fashioned ideas about how one should treat strangers who call on the phone. The Survey confirmed, however, that thousands of people take the bait set by fraudulent telemarketers every day.

The Survey is based on interviews with 745 telemarketing fraud victims aged fifty and older. All of the victims were identified as participants in at least one of a number of fraudulent telemarketing schemes investigated and prosecuted at the state or federal level. Many of the names appeared on lists maintained by the telemarketers themselves that prosecutors obtained during the course of their investigations. It is interesting to note that the people on the telemarketers' lists do not necessarily think of themselves as victims of fraud. All of the victims were notified of the prosecution of the telemarketer and their inclusion on a list of victims as part of the case. The prosecutors noted, however, that many, if not most, victims continued to believe they had not been defrauded. In fact, many felt they would have received their vacation, prize, car, etc., if only the Attorney General or U.S. Attorney had not shut down the telemarketer's operation.

1. Victim profile

The Survey confirmed that older people appear to fall victim to telemarketing fraud much more than younger people. More than

half (56%) the victims[3/] contacted for this survey based on prosecutors' lists were aged fifty and older, while then-current census data indicated that only 36% of the adult population was in this age group. *Id.* at 4. Among the victims, 14% were seventy-five and older, while only 7% of the total adult population was in this age bracket. *Id.*

2. Social networks and activities

Contrary to the prevailing image of older telemarketing fraud victims derived from anecdotal evidence, the Survey showed they were not socially isolated. Older victims had living arrangements that were similar to older people in general. Only 28% of the victims lived alone, compared to census figures indicating that 21% of all people aged fifty and older lived alone. *Id.* Older telemarketing fraud victims had extensive networks of family and friends with whom they were in regular, close contact. Eighty percent of victims lived near family, and almost all (96%) lived near friends. *Id.* Many victims (41%) visited with a friend or relative in the week before the survey interview and almost half (47%) had a telephone conversation with a friend or family member during that period. *Id.* Only 1% of the older victims had not had any personal contact with someone close to them in the week preceding the interview. *Id.*

Again, contrary to popular belief, older victims were quite active in their communities. Almost two-thirds (64%) of victims attended a religious institution at least once during the week before the interview. *Id.* In addition, during the week before the interview, half of the victims (54%) attended a club or social group meeting, 38% did volunteer work, and 12% went to a movie or show. *Id.* at 5.

[3/] Throughout the Survey, "older fraud victims" and "victims" are used as a shorthand to refer to people fifty and older who were victims of telemarketing fraud.

3. Media exposure

Older victims were very attentive to news and consumer information. Eight in ten read a newspaper regularly, 79% read magazines regularly, and 81% watched the local news on a regular basis. *Id.* at 6. Seventy percent of victims subscribed to cable television, and 75% of those (52% of all victims) watched CNN regularly. *Id.* Nearly four in ten victims watched television talk shows, such as "Oprah" or "Geraldo," at least sometimes, with comparable numbers listening to call-in radio shows. *Id.* Almost all victims (90%) reported hearing or reading about companies that take advantage of people by selling them worthless products or services, or by tricking them into giving money for nothing. *Id.*

4. Demographics

Survey participants were more affluent and better educated than other people fifty and older. Almost all victims owned their own homes, and nearly a third had a college degree. *Id.* at 7. Slightly fewer than one-half of the victims (43%) had annual household incomes of $30,000 or more, compared with just over one-third (38%) of all adults 50 and older. *Id.* Forty-three percent had assets, excluding home equity, of at least $50,000, and 28% reported assets of at least $100,000. *Id.* Survey interviewers gave victims high scores for their articulateness and comprehension. In assessments completed after each interview, they said 73% of victims had no trouble answering survey questions, 72% had no difficulty understanding the questions, and 50% had an excellent ability to think and reason clearly. *Id.*

5. Contacts with telemarketers

The Survey also questioned victims about their contact with telemarketers, and found they were "besieged" by them. *Id.* at 9. Almost half (46%) of the fraud victims had received a telemarketing solicitation within the week preceding the interview, and 8% had been called that day. *Id.* Four in ten (42%) said they received twenty or more calls during the prior six months from telemarketers who asked for a charitable contribution, tried to sell them something, or talked to them about a sweepstakes or contest. *Id.* Among victims aged fifty to sixty-four, 49% of men and 48% of

women reported receiving twenty or more solicitations in the prior month. *Id.*

Quite surprisingly, older telemarketing fraud victims said they did not like phone solicitations, tried to avoid them, and viewed them with skepticism. Two thirds (68%) said that when a telemarketer called they tried to get off the phone as quickly as possible. *Id.* at 10. Still, one fourth (28%) said they usually listened to what the caller had to say. *Id.* Victims who lived alone were slightly more likely to listen to the pitch (32%) than those who lived with others (26%), and one-third (30%) of victims 75 and older said they usually listen, compared with a quarter (25%) of victims under 75. *Id.*

Eighty percent of victims said they did not enjoy getting telemarketing calls and almost all (97%) said that if they had a choice, they would reduce the number of calls they received. *Id.* at 10. Despite their behavior, almost all victims (90%) believed it was acceptable to hang up on a persistent telemarketer, and three-quarters (77%) rejected the idea that good manners compelled them to respond with a donation or purchase when a telemarketer offered to send a gift. *Id.* A majority (58%) of victims thought that most companies that sell products or services through telemarketing were trying to take advantage of consumers. *Id.* Forty-two percent of fraud victims said most organizations that call people for donations to a charity or community project were trying to take advantage of people like them, the same percent said this happened sometimes, and only 11% said these organizations hardly ever tried to take advantage of people. *Id.* at 11.

6. Inability to recognize fraud

A surprising finding, given that respondents were victims, is that they generally knew what to do to avoid being defrauded by a telemarketer. When asked how a friend or relative should deal with these situations, without any prompting about possible responses, almost all victims (96%) described an action that could be effective in preventing fraud. *Id.* at 11. For example, 44% said people should just hang up on telemarketers, 9% said to ask for written confirmation of offers, and 5% said to call the authorities. *Id.* Yet, victims also said it was hard to spot fraud when it was happening.

Two-thirds (68%) said most people like them would find it hard to tell when someone was selling worthless products or services or trying to trick them into giving money for nothing. *Id.* at 17-18. The most affluent victims were most in doubt about how to tell honest pitches from fraudulent ones. Three-quarters (73%) of victims with at least $20,000 in assets, compared with 60% of victims with fewer assets, said telemarketing fraud was hard to detect. *Id.* at 18.

7. Reluctance to seek assistance or advice

Victims had trouble recognizing deceptive practices and finding effective strategies for rejecting strangers' requests for money. These difficulties were exacerbated by their reluctance to seek advice or assistance about financial matters. Almost half (47%) the victims said they never asked friends or family members for advice or help with problems; 79% did not seek advice with respect to managing money; 58% with understanding official documents; and 55% with decisions about buying products and services. *Id.* at 21. While seventy-five percent of victims who had sent money as part of a sweepstakes said they were not pleased with the outcome, *id.* at 22, almost half (47%) of those who said they were unhappy about how the sweepstakes turned out did not complain, discuss the situation, or try to get help once they realized they had been defrauded. *Id.*

8. Types of telemarketing fraud victims

In order to better understand the motivations of telemarketing fraud victims, a segmentation analysis[4/] was conducted, revealing five types of victims: "Open to Anything" (37%); "You Can't Fool Me" (30%); "Polite and Vulnerable" (14%); "Likes to Buy" (11%); and "Naive" (8%). *Id.* at 23. The attitudes and behaviors that characterize each of these groups are discussed below.

"Open to Anything" -- The largest group, its members were very social and, while skeptical about telemarketers, would

---

[4/] The methodology used for this analysis is described in the Survey Appendix at 40.

participate in a sweepstakes if it did not cost a lot. Most members of this group of fraud victims attended religious institutions regularly and attended weekly meetings of a club or social group, and approximately one-half did volunteer work on a weekly basis. These victims admitted that they were confused about telemarketing fraud. Of this group, 81% said it was hard to know when a telemarketer was trying to take advantage of someone, compared with 61% of other victims. *Id.* Perhaps as a result, they were quite wary of sweepstakes (82% think they are scams) and more likely than other victims to resist sweepstakes that required a purchase, payment, or donation. *Id.* When they did participate, it was more likely to be a low-cost contest. *Id.*

"You Can't Fool Me" -- Members of this group of fraud victims were extremely wary of telemarketers and determined to ignore their mail and telephone pitches. Yet, they also were resistant to the advice and help of other people. In addition, they were quite isolated and private: they had more limited weekly activities than other groups, and sought advice less often than other groups when they had a problem or needed to make a purchase decision. A majority of this group believed that organizations that telephone to ask for donations, that contact people about sweepstakes, and that sell products over the phone mostly are trying to take advantage of people. *Id.* at 24. About one-third (32%) thought it was easy to figure out when a scam was occurring, 85% tried to get telemarketers off the phone as quickly as possible, and 87% did not enjoy getting these calls at all. *Id.*

"Polite and Vulnerable" -- Members of this group of fraud victims had difficulty rejecting telemarketers. They were more likely than those in other groups to have suffered a recent trauma, which might have made them more receptive to a stranger's call. One-half (51%) of this group, compared with 24% of other groups, said they usually listened to telemarketers' pitches, rather than trying to get them off the phone quickly. *Id.* Also, 22% said it is not okay to hang up on a salesperson who ignored them when they said they were not interested in making a purchase, compared with only 6% of other victims. *Id.* Moreover, almost three-fourths (73%) of this group said that good manners compelled them to buy something or make a donation to someone who offered gifts or sent a gift in the mail, as opposed to only 2% of other victims. *Id.* Paradoxically,

members of this group were more likely than those in any other group to say it is easy to spot fraud. *Id.* at 24-25.

"Likes to Buy" -- This group consisted of people who were more likely than other fraud victims to be open to sales pitches and to participate in sweepstakes that required sending money, even large amounts. Their eagerness to buy and spend was coupled with confusion, making them particularly vulnerable to fraud. Two-thirds (67%) of this group listened to telemarketers' offers, compared with only 23% of other victims, and more than one-half (55%) usually read their mail about product offers and contests (compared with 29% of other victims). *Id.* at 25. Members of this group admitted their confusion about fraud, with 88% saying it was hard to spot when it was happening. *Id.*

"Naive" -- This group was distinguished by the victims' failure to perceive different types of telemarketers as out to take advantage of people like them, and their belief that they never have been victimized by fraud. Only 22% of these fraud victims thought that most sweepstakes offered by phone are scams, only 10% were skeptical of most people selling products by phone, and just 5% were wary of most callers seeking charitable donations. *Id.* Many people in this group were unaware of instances in which people were defrauded by buying worthless products or giving money to a scam artist. Particularly striking is the fact that people in this group did not even recognize their own victimization -- 62% said they have never had any experience where they felt they were the subject of a major swindle or fraud, compared with 17% of other victims who denied their own victimization. *Id.*

The results of this research showed that there is no easy explanation of why people fall for fraudulent telemarketing schemes. What emerges fairly clearly from the research, however, is that people have a great deal of difficulty differentiating between a fraudulent and a legitimate telemarketing pitch.

CONCLUSION

AARP's research debunked many of the theories about why older people are particularly vulnerable to telemarketing fraud. It does not, however, diminish the fact that fraudulent telemarketers specifically target them and that they fall for the scams. Nor does it change the fact that older people are particularly hard hit by this fraud, because they have fewer opportunities and a shorter time period than younger victims within which to recoup their losses. If one fact clearly emerged from the research, it is that older victims find it extremely difficult, if not impossible, to distinguish between fraudulent and legitimate pitches.

The Court has recognized that the government has a legitimate interest in protecting the public and charities from fraud and that "[f]raudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." *Village of Schaumberg v. Citizens for a Better Env't*, 444 U.S. 620, 637 (1980), *see also Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 792 (1988). AARP respectfully submits that the Illinois courts erred in preventing the Petitioner from pursuing a fraud action to fulfill this interest.

December 24, 2002

Respectfully submitted,

Deborah M. Zuckerman
Counsel of Record
Stacy Canan
AARP Foundation

Michael R. Schuster
AARP

601 E Street, N.W.
Washington, D.C. 20049
(202) 434-2060

Counsel for *Amicus Curiae*